

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF NEW YORK

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In re

ALLEN W. & ANN E. HALSTEAD

Case No. 04-10100

Debtor(s)  
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APPEARANCES:

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Hon. Robert E. Littlefield, Jr., U.S. Bankruptcy Judge

**MEMORANDUM-DECISION AND ORDER**

Currently before the court is a motion by Allen W. Halstead and Ann E. Halstead (“Debtors”) to sever their case and convert Allen W. Halstead’s (“Allen”) case to chapter 13. The Chapter 7 Trustee, Philip J. Danaher (“Trustee”), did not oppose the severance but offered

oral opposition to the conversion of Allen's case at the hearing on the motion. The court has jurisdiction pursuant to 28 U.S.C. §§ 157(a), 157(b)(1), 157(b)(2)(A) and 1334(b).

### **FACTS**

Based upon the pleadings submitted, the court finds the following:

- 1) The Debtors filed a joint chapter 7 petition on or about January 9, 2004.
- 2) On Schedule A, the Debtors list a joint interest in a "Residence," which they value at \$155,435.
- 3) On Schedule D, the Debtors list Cendant Mortgage as the holder of a first mortgage against the Residence in the amount of \$153,069.
- 4) The Debtors received their discharge on April 20, 2004.
- 5) The Trustee filed a motion to sell his interest in the Residence on April 12, 2004. The Trustee's motion was made returnable on May 6, 2004.
- 6) The Debtors filed their motion to sever and convert on April 13, 2004. The Debtors' motion was also made returnable on May 6, 2004.
- 7) The Debtors desire to sever their cases and convert Allen's case to chapter 13, while keeping Ann Halstead's case in chapter 7.

### **DISCUSSION**

#### **(A) MOTION TO SEVER**

There was no opposition to the Debtors' request to sever their case. This portion of the motion is therefore granted. The case of Ann E. Halstead shall continue in chapter 7 with Case No. 04-10100.

#### **(B) MOTION TO CONVERT**

This court has recently addressed the issue presented by Allen's request to convert his case to chapter 13, namely, whether there is an absolute right to convert from chapter 7 to chapter 13 pursuant to § 706(a). In the case of *In re Carrow*, Case No. 02-17838 (September 8,

2004),<sup>1</sup> this court looked to the express language of § 706 and held that a debtor has the right to convert at any time as long as (1) the debtor's case was not previously converted, and (2) the debtor is eligible for chapter 13. *See* 11 U.S.C. § 706(a),(d).

The Trustee does not argue that either (1) Allen's case was previously converted, or (2) Allen is not eligible for chapter 13 pursuant to § 109. As such, the court finds no impediment to the conversion of Allen's case to chapter 13.

### **CONCLUSION**

Based upon the foregoing, it is hereby

ORDERED, that the case of Allen W. Halstead and Ann E. Halstead is hereby severed to permit separate administration; and it is further

ORDERED, that the case of Ann E. Halstead shall remain in chapter 7 under Case No. 04-10100; and it is further

ORDERED, that the case of Allen W. Halstead is converted to Chapter 13 under Case No. 04-15829; and it is further

ORDERED, that a chapter 13 trustee shall be appointed in Allen W. Halstead's case; and it is further

ORDERED, that the Debtors' counsel shall (1) serve all creditors with a notice that despite Allen W. Halstead having received a Chapter 7 discharge extinguishing personal liability, a claim may still be filed against his Chapter 13 estate, and (2) file proof of service with the court; and it is further

ORDERED, that the Trustee's motion to sell shall be restored to the court's motion

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<sup>1</sup> The court assumes familiarity with the *Carrow* decision.

calendar on September 30, 2004 at 9:00 A.M.<sup>2</sup>

Dated: September 9, 2004

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Hon. Robert E. Littlefield, Jr.  
U.S. Bankruptcy Judge

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<sup>2</sup> The Trustee's sale motion was premised on the sale of the estate's interest in the Residence jointly owned by Allen W. Halstead and Ann E. Halstead. With the severance of the Debtors' case and the conversion of Allen's case to chapter 13, the estate's interest now consists only of Ann E. Halstead's portion of the Residence. Based upon the changed circumstances, USR may wish to withdraw or amend their offer.